Supreme Court, U.S.
FILED
MAY 22 1996
CLERK

No. 95-1712

In The

Supreme Court of the United States

October Term, 1995

INVESTORS EQUITY LIFE HOLDING COMPANY,

Petitioner,

v.

WAYNE C. METCALF, INSURANCE COMMISSIONER OF THE STATE OF HAWAII; INVESTORS EQUITY LIFE INSURANCE COMPANY OF HAWAII, LTD.; and HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Hawaii

RESPONDENTS' JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should this Court review the Hawaii Supreme Court's determination that, under Hawaii law, the sole shareholder of a Hawaii insurance company does not have standing to oppose a petition to liquidate the insurance company?

STATEMENT REGARDING THE PARTIES AND REGARDING CORPORATE PARENTS AND SUBSIDIARIES

Named parties to the appeal to the Supreme Court of the State of Hawaii were: Wayne C. Metcalf, Insurance Commissioner of the State of Hawaii; Investors Equity Life Insurance Company of Hawaii, Ltd. ("IEL"); and Investors Equity Life Holding Company ("IELHC"). Although it was not a named party below, Respondent Hawaii Life and Disability Insurance Guaranty Association (the "Association") exercised its statutory authority pursuant to HAW. REV. STAT. § 431:16-208(1) (1993) to appear in the proceedings before the circuit court and the Hawaii Supreme Court. *See* Appendix A-1, n.1, and C-2.[1] For purposes of economy and the Court's convenience, Commissioner Metcalf (in his capacity as Liquidator of IEL) and the Association are filing this brief jointly; however, they reserve their right to appear and proceed separately in any further proceedings.

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[1] The Association was created by the Hawaii legislature through the enactment of the Hawaii Life and Disability Insurance Guaranty Association Act, HAW. REV. STAT. § 431:16 – 201 *et seq.* ("Association Act"). Appendix C-4. The Association Act established the Association for the purpose of protecting policyholders under life and disability insurance policies and annuity contracts in the event of the impairment or insolvency of life insurance companies licensed in Hawaii. *Id.*, C-5. Under the Association Act, upon the entry of an order of liquidation containing a finding of insolvency, the Association becomes obligated, subject to certain limitations, to provide continuing coverage for policyholders of the insolvent insurer. *Id.* As a result of the insolvency of IEL, the Association became obligated to provide continuing coverage for IEL's policyholders.

STATEMENT REGARDING THE PARTIES AND REGARDING CORPORATE PARENTS AND SUBSIDIARIES – Continued

Pursuant to Supreme Court Rule 29.6, Respondents state that Petitioner Investors Equity Life Holding Company is the parent and sole shareholder of Respondent IEL.

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APPLICABLE CONSTITUTIONAL PROVISION AND STATE STATUTES

Section 1 of the Fourteenth Amendment to the United States Constitution states in part as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

Relevant provisions from the Hawaii Insurers Supervision, Rehabilitation and Liquidation Act, HAW. REV. STAT. § 431:15-101 *et seq.*, are:

§ 431:15-101:

* * *

> (c) This article shall be liberally construed to effect the purpose stated in subsection (d).
>
> (d) The purpose of this article is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers. . . .

§ 431:15-104(c):

> No court of this State has jurisdiction to entertain, hear or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to,

incidental to, or relating to that type of proceedings other than in accordance with this article.

§ 431:15-301:

(a) The commissioner may apply by petition to the circuit court of the first judicial circuit for an order authorizing the commissioner to rehabilitate a domestic insurer or an alien insurer domiciled in this State, on any one or more of the following grounds whenever the commissioner reasonably believes that the insurer may be successfully rehabilitated without substantial increase in the risk of loss to the insurer's policyholders, creditors, or to the public. . . .

(1) The insurer is insolvent;

(2) The insurer is in such condition that the further transaction of business would be hazardous, financially, to its policyholders, creditors or the public.

§ 431:15-302:

(a) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this State, shall appoint the commissioner and the commissioner's successors in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer, and to administer them under the general supervision of the court.

§ 431:15-303(d):

If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is

appropriate, the rehabilitator shall prepare a plan to effect such changes.

§ 431:15-305(a):

Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the commissioner may petition the circuit court of the first judicial circuit for an order of liquidation. . . . The court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

§ 431:15-306:

The commissioner may petition the circuit court of the first judicial circuit for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this State on any ground on which the commissioner may apply for an order of rehabilitation under section 431:15-301, whenever the commissioner believes that attempts to rehabilitate the insurer would substantially increase the risk of loss to its creditors, its policyholders or the public, or would be futile, or that rehabilitation would serve no useful purpose, whether or not there has been a prior order directing the rehabilitation of the insurer.

§ 431:15-307(d):

At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an

> insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper the court may make the declaration.

STATEMENT OF THE CASE

Investors Equity Life Insurance Company of Hawaii, Ltd. ("IEL") is a Hawaii insurance company that was authorized to sell life insurance and annuities only in Hawaii. IEL is subject to the regulatory authority of the Hawaii Insurance Commissioner ("Commissioner"). On June 22, 1994, the Commissioner petitioned the Circuit Court of the First Circuit of the State of Hawaii for seizure of IEL pursuant to HAW. REV. STAT. § 431:15-202 and for an order of rehabilitation pursuant to HAW. REV. STAT. § 431:15-301. An affidavit attached to the Commissioner's petition stated that, after a review of information provided through IEL or its auditors, it appeared to the Insurance Division that IEL was insolvent in the amount of $52 million. The circuit court entered a Seizure Order authorizing the Commissioner to take possession and control of all the assets of IEL. Appendix E. A Stipulated Rehabilitation Order (between the Commissioner and Petitioner), appointing the Commissioner as Rehabilitator of IEL, was entered two days later. Appendix G.

Following further review of IEL's financial condition, the Commissioner petitioned the circuit court on August 5, 1994, for liquidation of IEL. Appendix C-1. In his petition, the Commissioner asserted, among other reasons, that IEL was in such a condition that further transaction of business would be financially hazardous to its

policyholders, creditors, or the public; that the interests of policyholders, creditors or the public might be endangered by delays; and that the Commissioner believed that attempts to rehabilitate the insurer would be futile and/or would serve no useful purpose. Affidavits supporting the bases for liquidation were attached to the petition.

Hearings were held in the circuit court on the Commissioner's petition during August and September, 1994. Prior to the first hearing, Petitioner IELHC (IEL's sole shareholder) sought leave to intervene and present a proposed plan of rehabilitation which, it contended, would "eliminate completely" the insolvency of IEL through the contribution of certain assets by IELHC. Appendix C-6, ¶ 14. Notably, the Petitioner's proposed plan *did not dispute*, but in fact conceded, IEL's substantial insolvency. Appendix C-22, ¶ 27.

In addition to Petitioner, five directors of IEL appeared and filed a memorandum which opposed the petition for liquidation and requested a continuance in order to consider and discuss Petitioner's proposed rehabilitation plan. Appendix C-2. Like Petitioner, the IEL directors did not contest IEL's insolvency.

In accordance with a stipulation between Petitioner and the Commissioner (Appendix H), Petitioner was permitted to intervene in the case and to participate in the proceedings in the circuit court. The circuit court ultimately concluded, however, that under the statute controlling the proceedings, the Petitioner – unlike the directors, who were expressly granted standing (HAW. REV. STAT. § 431:15-305(a)) – did not have standing to

intervene in the proceedings to challenge the Commissioner's petition for liquidation. Appendix C-15, ¶ 10.

Petitioner's rehabilitation plan was reviewed by the Commissioner and by consultants retained by him to assess the plan's potential value and feasibility. Appendix C-7, ¶ 15. Based on that review, the Commissioner determined that the plan would not suffice to eliminate the insolvency. In its Findings and Conclusions, the circuit court laid out in detail the specific factors that led it to agree that the plan would not accomplish what Petitioner claimed. *See* Appendix C-6, ¶ 14, through C-10, ¶ 25. The court accordingly granted the Commissioner's petition for liquidation.[2] Appendix C-24, ¶ 3.

Petitioner appealed to the Hawaii Supreme Court, contending that there was insufficient evidence to support the circuit court's findings and conclusions, and that the circuit court's failure to provide a full evidentiary hearing was a denial of Petitioner's right to due process. Appendix A-3. The IEL Directors, who had a statutory right to object to liquidation and who had participated in the circuit court proceedings, did not appeal the circuit court's Order. The Hawaii Supreme Court did not reach

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[2] The circuit court also concluded that the parties had been afforded a full and fair opportunity to present their arguments and the factual bases therefor, and that the absence of a full evidentiary hearing "in no way affected the final outcome of the matters pending before this Court." Appendix C-22, ¶ 28, to C-23, ¶ 29.

the merits of Petitioner's contentions, because it concluded that Petitioner lacked standing to oppose the liquidation petition in the circuit court. Appendix A-5. Petitioner thereupon filed its Petition for a Writ of Certiorari in this Court.

SUMMARY OF ARGUMENT

This case presents no "important question of federal law" that warrants review by this Court. The decision below turns on interpretation of a state statute governing insurance company insolvencies – an area of significant concern to the State of Hawaii. In deciding whether Petitioner had standing to contest the liquidation of IEL, the Hawaii Supreme Court examined the relevant Hawaii statute and concluded that, consistent with the language and purpose of the statute, a shareholder such as Petitioner did not have standing to oppose the liquidation petition filed by the Commissioner. The Hawaii Supreme Court's decision in this regard is entirely consistent with cases from other jurisdictions on the same issue, and is in no way inconsistent with any decision of this Court.

Petitioner suggests that the Hawaii Supreme Court should have gone beyond the statutory analysis and undertaken a separate analysis of its claim of "constitutional standing," based on an alleged violation of its due process rights. In the circumstances presented here, no such inquiry was warranted. First, Petitioner's interest as a shareholder of an insolvent insurance company did not rise to the level of a property interest protected by the

Due Process Clause, especially when IEL's Directors could and did participate in the proceedings. Second, even assuming Petitioner had a protectable property interest at stake, Petitioner received all the "process" that was due it. Despite Petitioner's lack of standing, the circuit court allowed Petitioner to intervene and gave Petitioner the opportunity to present its proposed plan of rehabilitation. That Petitioner's plan was ultimately rejected following consideration by the Commissioner, his consultants, and by the circuit court does not raise any constitutional concerns.

There is accordingly no important question of federal law presented by this case and no need for any constitutional inquiry into Petitioner's standing in these proceedings. The Petition for a Writ of Certiorari should be denied.

ARGUMENT

I. IN DECIDING WHETHER PETITIONER HAD STANDING, THE HAWAII SUPREME COURT PROPERLY FOCUSED ITS INQUIRY ON THE STATE STATUTORY SYSTEM GOVERNING THE PROCEEDINGS AT ISSUE, AND CORRECTLY DETERMINED THAT PETITIONER HAD NO STANDING UNDER STATE LAW TO OPPOSE THE LIQUIDATION PETITION.

Petitioner contends that the Hawaii Supreme Court's standing analysis was deficient because the court limited its focus to the state statute governing the proceedings at issue rather than addressing Petitioner's claim of standing based on an alleged violation of its due process

rights. Petition, p. 21. However, this disregards the fact that Petitioner sought to be heard in proceedings that are part of a detailed state statutory system governing insurance company insolvencies and judicial review thereof. In such circumstances, the Hawaii Supreme Court was entirely correct in focusing its inquiry on that statutory system. In *Sierra Club v. Morton*, 405 U.S. 727, 732 (1972), this Court stated:

> Where . . . Congress has authorized public officials to perform certain functions according to law, and has provided by statute for judicial review of those actions under certain circumstances, the inquiry as to standing must begin with a determination of whether the statute in question authorizes review at the behest of the plaintiff.

Assuming a dispute is otherwise justiciable, the question whether a litigant is a "proper party to request an adjudication of a particular issue" is one within the power of the Congress (and, presumably, the Hawaii legislature) to determine. *Id.* These principles are particularly applicable where, as here, the proceeding in which standing is sought relates to regulation of insurance, a matter in which states have a vital interest.

Having properly focused on the state statutory system, the Hawaii Supreme Court correctly decided that the statute at issue did not afford standing to shareholders of an insolvent insurance company. Proceedings to liquidate IEL were brought pursuant to HAW. REV. STAT. Chapter 431, Article 15 (1993), the Insurers Supervision, Rehabilitation & Liquidation Act ("Article 15"). Appendix A-2. Examining relevant statutory language, the Hawaii

Supreme Court noted that Article 15 includes a provision (§ 431:15-104(c)) that no Hawaii court has jurisdiction to determine any complaint praying for relief relating to the liquidation or rehabilitation of an insurer *"other than in accordance with this article."* Appendix A-4. Further, Article 15 gives the Insurance Commissioner the sole discretion to prepare a rehabilitation plan *if* he determines that it is *appropriate* (§ 431:15-303(d)), and provides that "the court shall permit *the directors of the insurer* to take such actions as are reasonably necessary to defend against the petition" for an order of liquidation (§ 431:15-305(a)). *Id.* (Emphasis as in Hawaii Supreme Court opinion.)

The court also found it significant that the purpose of Article 15 is to protect the interests of insureds, claimants, creditors, and the public generally (§ 431:15-101(d)). Notably absent from the purpose of the statute is "the protection of *shareholders* of the insolvent insurance company." Appendix A-5 (citing *Hartnett v. Southern American Fire Ins. Co.*, 495 So. 2d 902, 903 (Fla. Dist. Ct. App. 1986)). Finally, section 431:15-101(c) provides that Article 15 "shall be liberally construed" to effect the stated purpose of the statute. *Id.*

The Hawaii Supreme Court accordingly held that it was consistent with the language and the purpose of Article 15 to conclude that Petitioner did not have standing to oppose the petition to liquidate IEL.[3] Although

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[3] As previously noted, the circuit court (which under § 431:15-307(d) has jurisdiction to make the necessary declarations in a proceeding to liquidate an insurance company "after providing such notice and hearing as it deems proper") approved a stipulation giving the Petitioner an opportunity to

Petitioner claims that the Hawaii Supreme Court should have gone on to consider Petitioner's asserted constitutional basis for standing (see discussion in Section II, below), Petitioner does not appear to take the position before this Court that the Hawaii Supreme Court's analysis of standing *under the statute* was incorrect. In fact, that court's opinion was not only correct, but was entirely consistent with the case law from other states that have addressed the issue under their analogous insurance statutes. In *Hartnett*, for example, the Florida District Court of Appeal – construing a statutory system similar to Hawaii's – held that majority shareholders of an insolvent insurance company did not have standing to contest claims filed in the receivership of the company. Like the Hawaii Supreme Court, the Florida court concluded that where protection of shareholders was not among the purposes of the statute, shareholders should not be deemed to have standing in proceedings brought under the statute. *Id.* at 903. *See also Foster v. Mutual Fire, Marine & Inland Ins. Co.*, 614 A.2d 1086 (Pa. 1992), *cert. denied*, 506

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participate in the proceedings before it, notwithstanding a subsequent express determination that Petitioner did not have standing to submit its own rehabilitation plan. Appendix C-16, ¶ 12 ("This Court concludes that, consistent with the foregoing, IELHC has no standing to submit a plan of rehabilitation to this Court. Notwithstanding this conclusion, IELHC has been afforded a full opportunity to present its position in this proceeding and its submissions have been considered, without regard to its lack of standing"). As the Hawaii Supreme Court correctly concluded, the circuit court did not somehow confer standing where standing did not otherwise exist under the statute, nor was the circuit court prevented from later determining that Petitioner did not have standing.

U.S. 1080 (1993), and *Kentucky Central Life Ins. Co. v. Stephens*, 897 S.W.2d 583 (Ky. 1995), discussed in Section II, below.

In light of the fact that the Hawaii Supreme Court's resolution of the standing issue under Hawaii's Insurers Supervision, Rehabilitation and Liquidation Act was in accordance with the express language of the statute and was consistent with precedent in other states, there is no compelling interest requiring this Court to review that determination.

II. THIS CASE DOES NOT INVOLVE A FEDERAL CONSTITUTIONAL ISSUE THAT WOULD AFFORD STANDING TO PETITIONER NOTWITHSTANDING THE STATUTE'S DENIAL OF STANDING.

It is doubtless true that a legislature cannot deny standing under a statute if such a denial would lead to the loss of constitutional rights by the affected party. *See Battaglia v. General Motors Corp.*, 169 F.2d 254, 257 (2d Cir.), *cert. denied*, 335 U.S. 887 (1948). This case, however, does not present such a situation. Although Petitioner claims that the state court's refusal to afford it standing precluded it from asserting its constitutional right not to be deprived of a property interest without due process of law (Petition, pp. 24-25), a careful examination of the alleged "due process" violation demonstrates that no constitutional considerations required the Hawaii Supreme Court to go beyond the statutory system at issue.

A. Petitioner Had No Property Interest That Warranted Protection Under the Due Process Clause.

The initial step in any due process inquiry is to determine whether the nature of the asserted interest is one within the contemplation of the "liberty or property" language of the Fourteenth Amendment, such that due process applies. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). It is thus necessary to begin with an assessment of whether Petitioner's claimed property interest is the sort of interest protected under the Due Process Clause.

This Court has frequently observed that property interests are created, and their dimensions are defined, by existing rules or understandings that stem from an independent source such as state law. *E.g., Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538 (1985); *Paul v. Davis*, 424 U.S. 693, 710 (1976) (liberty and property interests within the meaning of the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law"); *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

As previously noted, in situations involving insolvent insurance companies, Hawaii state law affords little if any weight to the property rights of shareholders of the insolvent insurer, but instead makes these rights subordinate to the rights of those parties – "insureds, claimants, creditors, and the public" – whom the statute was intended to protect. § 431:15-101(d); *cf.* Appendix A-5. State courts from other jurisdictions have recognized the reality that rights of shareholders and others may need to be compromised to avoid greater harm to policyholders

and the public in insolvency situations. In *Foster, supra,* the Pennsylvania Supreme Court rejected an argument that a rehabilitation plan for an insolvent insurer impermissibly impaired the objectors' constitutional rights. It observed:

> [W]e must look to the broad powers afforded to the Commissioner granted in order to effectuate equitably the intent of the Rehabilitation statutes, *i.e.,* to minimize the harm to all affected parties. As such, she has a fiduciary duty to marshall and preserve all assets of the insolvent entity. Furthermore, the exigencies attendant to a major commercial insolvency and the goals of rehabilitation necessitate the reality that "individual interests may need to be compromised in order to avoid greater harm to a broader spectrum of policyholders and the public."

614 A.2d at 1094. The court also noted that the objectors to the plan were "members of a highly regulated industry and as such were well aware of the powers of a Rehabilitator." *Id.* at 1094 n.4. This statement could be applied with equal accuracy to the Petitioner in this case, which acquired its interest in IEL several years after the statutory regime at issue was in place.

In *Kentucky Central Life Ins. Co. v. Stephens, supra,* the Kentucky Supreme Court rejected claims by an insurer and its shareholders in an insurance liquidation proceeding that the trial court had approved an arbitrary taking of their property without affording them due process of law. Observing that property rights are created and defined by state law, the Kentucky Supreme Court concluded that no violation of the shareholders' substantive

or procedural due process rights had occurred. It reasoned:

> The [Kentucky] Insurance Code . . . prioritizes the order of distribution of claims from an insurer's estate in order of classification: administration costs; wages; lost and unearned premium claims; residual classification; claims based solely on judgments; interest on claims already paid; and miscellaneous subordinated claims. Appearing next to last in order are preferred ownership claims and at the bottom of the list are the proprietary claims, which include claims of shareholders or other owners.
>
> . . . The universal rule of stockholder liability is simply a function of the basic concept that stockholders are remaindermen and that their only interest is in the equity, only what is left over after all corporate obligations have been paid. . . . The business of insurance is affected with the public interest and Kentucky has an important and vital interest in the liquidation or reorganization of a troubled insurance business.

897 S.W. 2d at 590-91.

Similarly, in cases outside the insurance context, it is recognized that the property interest of a shareholder does not generally include standing to redress an injury to the corporation in which the shareholder holds stock. *See, e.g., Franchise Tax Board of California v. Alcan Aluminum, Ltd.*, 493 U.S. 331, 336 (1990); *EMI Ltd. v. Bennett*, 738 F.2d 994, 997 (9th Cir.), *cert. denied*, 469 U.S. 1073 (1984);

Paulson, Inc. v. Bromar, Inc., 775 F. Supp. 1329, 1339 (D. Haw. 1991). As one court has explained:

> A stockholder generally has standing to sue to vindicate the rights of the corporation only in a derivative capacity. Before being allowed to sue in a derivative capacity, a plaintiff stockholder must show that he is asserting the rights of the corporation because the corporation refuses to vindicate its own rights.

Bosley v. Baltimore County, Md., 804 F. Supp. 744, 751 (D. Md. 1992), *aff'd*, 986 F.2d 1412 (4th Cir. 1993) (*per curiam*).

The Hawaii statute governing insurance company insolvencies is consistent with these well-established principles of corporate law. Petitioner's "property interest" as a shareholder – if any – does not include standing to sue on behalf of IEL. That standing is reserved for the IEL directors, who are expressly authorized to defend against a petition for liquidation (HAW. REV. STAT. § 431:15-305(a)) and who in fact appeared in this matter. Petitioner, as the sole shareholder, had the right to vote on the members of the IEL board of directors or provide them with direction. What it did *not* have was standing to appear in those proceedings in its own right.

B. Even Assuming That There Was a Protectable Property Interest at Stake in This Case, Petitioner Received All the "Due Process" to Which It Was Entitled.

If it were determined that Petitioner had a property interest at stake that entitled it to protection under the Due Process Clause of the Fourteenth Amendment, it

would still be necessary to address the second prong of the due process analysis – namely, what process is due. *Morrissey*, 408 U.S. at 481. Petitioner asks the Court not to reach this issue (Petition, p. 23). However, the issue cannot be ignored, because it demonstrates the futility of Petitioner's attempt to obtain certiorari review in this case. *Even if* Petitioner had a protected property interest, the record reveals that Petitioner was afforded all the due process required under the circumstances to protect that interest.

This Court has held that due process is flexible, and calls for such procedural protections as the particular situation demands. *E.g., Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Not all situations calling for procedural safeguards call for the same kind of procedure. *Morrissey*, 408 U.S. at 481. The appropriate process due in a given situation requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal or administrative burdens that the additional procedures would entail. *Mathews*, 424 U.S. at 334-35.

Applying that analysis to the instant case demonstrates that Petitioner was not deprived of its rights to procedural due process. The dubious nature of the "property" interest at stake has already been discussed above. As to the remaining factors, the threat to the public and to policyholders, and the presence of exigent circumstances surrounding an insurance company insolvency,

give the State of Hawaii a significant interest in ensuring that there should be no unwarranted delays or hindrances in taking the steps needed to protect the public and the policyholders. Moreover, notwithstanding its interest in proceeding expeditiously, Hawaii has provided for judicial procedures to ensure that any private interests affected by the Commissioner's actions will be considered – thereby minimizing the "risk of an erroneous deprivation of such interests."

As set forth above, the statute gives the Commissioner the authority to petition the Court for an order of liquidation if he believes further attempts to rehabilitate the insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile. HAW. REV. STAT. § 431:15-305(a). The Commissioner exercised that authority in petitioning for IEL's liquidation. The statute directs the circuit court to make the necessary declarations in a proceeding to liquidate an insurance company "after providing such notice and hearing *as it deems proper*." HAW. REV. STAT. § 431:15-307(d) (emphasis supplied). The circuit court followed that directive in this case.

The directors of the insurer are to be permitted to "take such actions as are reasonably necessary to defend against the petition." HAW. REV. STAT. § 431:15-305(a). The directors did so in this case, filing a memorandum in opposition to the petition for liquidation. (The Hawaii Supreme Court took note of the directors' participation and observed that Petitioner "does not assert that the board of directors . . . failed to protect their interests or any special aspect thereof." Appendix A-5, n.5.)

Petitioner was permitted to intervene in the circuit court proceedings by stipulation. Although the circuit court ultimately concluded that Petitioner had no standing to submit its plan of rehabilitation to the court under the statutory system at issue, it nevertheless afforded Petitioner an opportunity to present its position and to have its submissions considered. Appendix C-16, ¶ 12. The proposed plan was reviewed by the Commissioner and by consultants retained by him to assess its potential value and feasibility. Appendix C-7, ¶ 15. The circuit court explained the bases for the Commissioner's conclusion that the proposed rehabilitation plan would not satisfy IEL's deficit, regardless of whether the deficit was deemed to be $65 million or in excess of $90 million. Appendix C-7 to C-10. It also noted that Petitioner had failed to provide any factual support for its arguments by way of affidavits and exhibits. Appendix C-10, ¶ 26.

In its Findings and Conclusions, the circuit court carefully outlined the legal principles applicable to Petitioner's due process claim (Appendix, C-19 to C-20), considered Petitioner's arguments in favor of a full evidentiary hearing on the petition for liquidation, and concluded:

> 27. . . . [T]he record before this Court contains ample evidence in the form of affidavits to support the finding that IEL is insolvent and that further efforts to rehabilitate IEL would serve no useful purpose. Despite ample opportunity to submit countervailing affidavits on the issue of insolvency, none have been submitted. To the contrary, Intervenor IELHC's own affidavits and arguments concede IEL's substantial insolvency.

> Thus, this Court concludes that a full evidentiary hearing is neither necessary nor appropriate with respect to the present Petition for Liquidation, the IELHC Petition for Rehabilitation, or the request for a declaration of insolvency.
>
> 28. The parties herein have been afforded a full and fair opportunity to present any and all arguments and factual bases supporting or opposing the Petition for Liquidation and IELHC Petition for Rehabilitation, including the [Commissioner's] request for a declaration of insolvency.
>
> 29. To the extent that the parties to the Petition for Liquidation and/or IELHC Petition for Rehabilitation are deemed to have been entitled to a full evidentiary hearing on some or all of the matters herein, this Court concludes the absence of such a hearing is not prejudicial to the substantial rights of the parties, and in no way affected the final outcome of the matters pending before this Court.

Appendix C-22 to C-23.

In light of the fact that the circuit court afforded Petitioner a full and fair opportunity to make its position known and have its submissions considered, no further "due process" was required. Thus, even if Petitioner possessed a protected property interest and even if it should have been afforded "standing" to protect that interest, it was in fact given the full amount of due process that was called for under the circumstances.

CONCLUSION

This case is entirely inappropriate for certiorari review. Principles of law applicable to standing and to procedural due process are well established. There is nothing in the Hawaii Supreme Court opinion that is contrary to these well-established principles, or inconsistent with decisions of other courts that have addressed standing issues in similar circumstances. Nor does this case present any "important question of federal law" which must be resolved by this Court. Instead, the case presents a well-reasoned opinion by the highest court of Hawaii, going to interpretation of Hawaii state law in an area in which the State has a vital interest.

Respondents accordingly request that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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